IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 126 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N GOPINATH

Versus

STP LIMITED CO.

Appearance:

1. Civil Revision Application No. 126 of 2002

MR AR MAJMUDAR for Petitioner No. 1-2

MR SJ PANDEY for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 08/04/2002

ORAL JUDGEMENT

Heard Mr. Majmudar, learned advocate for the petitioner original defendant and Mr. Pandey, learned advocate for the respondent - original plaintiff. During the hearing, I was taken through the memo of revision

application and the order under challenge passed by the learned trial Judge dated 29.1.2002 in application below Ex. 9 filed by the petitioner defendant in a Special Execution Application No. 86/2001, wherein, the petitioner-defendant has asked for time for four days for depositing the amount. After considering the submissions, the learned trial Judge has granted time upto 5.2.2002 by imposing condition that the defendant to pay 50% of the balance amount on or before 5.2.2002, failing which, no remedy will be available and on the basis of this, as transpires from the fact that the learned trial Judge has decreed the suit being Special Civil Suit No. 714/98 and according to the petitioner, the said judgement and decree was passed exparte. It was brought to my notice that the petitioner defendant had challenged the said decree by preferring First Appeal before this Hon'ble High Court being First Appeal No. 4731 of 2001.

2. While dealing with the first appeal, this Hon'ble Court has passed the following order :-

"Despite the opportunity being given, the present appellants have no bothered to appear before the court. In paragraph 3 of the judgement, it is mentioned that the learned advocate appeared by filing his vakalatnama (Exh.11) and requested for time on 12.10.1999. It seems that adjournments were granted. The court also observed that the defendants had not filed their written statement, to which the learned advocate submitted that there is some mistake as written statement was filed. He has shown us a certified copy of the written statement. To our surprise, the judgement is dated 30.12.2000 and the written statement was tendered on 29.12.2000.

Looking to the fact that it is a money decree, the amount is required to be deposited. If the decretal amount is deposited in this court within a period of eight weeks from today, the Registry shall issue process of admission of this appeal. We reject the request of the learned advocate for stay as it is a money decree."

The present revision application is filed by the petitioner and as per order dated 5.2.2002, while issuing notice, the court has observed that petitioner should give solvent surety to the tune of Rs.2,50,000/- on or before 20.2.2002 and on that condition, interim relief as prayed for in para 9(C) was granted. Thereafter, on

20.2.2002, after hearing Mr. Majmudar, the court has passed the following order :-

"Mr. Majmudar, LA for the petitioner submits that though this court on 5th Feb.2002, has directed to furnish solvent surety of Rs.2,50,000/-, the petitioners are not in a position to obtain solvent surety since the Mamlatdar is busy with design process and therefore, he seeks time to furnish bank guarantee.

Mr. Pandey, LA for the respondent is not present. Mr. Pandya, LA for Mr. Pandey, LA submits that, time upto Monday may be granted.

Accordingly, request of Mr. Majmudar for petitioner is considered. Matter is adjourned to 25th Feb.2002."

Thereafter, on 25.2.2002, Mr. Majmudar, LA wants to give Bank guarantee of Rs.2,50,000/- instead of solvent surety as ordered earlier and the court has as per order dated 25.2.2002 granted the permission and directed that bank guarantee of Rs.2,50,000/- be submitted in the name of Registrar, Civil Court, Vadodara on or before 4.3.2002 and the matter was adjourned to 5.3.2002 for hearing. Interim relief granted earlier to continue till then.

As per order dated 7.3.2002, the court has passed the following order :-

"Rule returnable on 1st April, 2002. IR to continue till then. Further the trial court is directed to decide the Misc. Civil Application No. 132/2001 pending before the 5th Jt. Civil Judge immediately. D.S. permitted."

3. Mr. Majmudar, LA has accordingly, submitted that in view of the order passed earlier by this court, the petitioner has furnished bank security to the extent of Rs.2,50,000/- and the application for setting aside the ex-parte decree being Misc. Civil Application No. 132/2001 pending before the trial Court be directed to dispose the said application accordingly. It is his submission that in the said application, the respondent plaintiff has not filed written statement and accordingly, it is his contention that while disposing of this Civil Revision Application, trial Court be directed to decide the said Misc. Civil Application as

expeditiously as possible.

4. As against this, Mr. Pandey for respondent has brought to my notice that the petitioner has challenged the decree by preferring the first appeal and even an application for stay was also filed as a decree was a money decree. The court has even as stated earlier directed the petitioner to deposit the decretal amount within time and further submitted that, this is not a matter, wherein, this court is required to entertain the revision application while exercising my revisional jurisdiction under Section 115 of the CPC. It is the contention of Mr. Pandey that decree is to the tune of Rs.12,82,381/-, which is pending before the Court and further that the Court while considering the application Ex.19, seeking for adjournment and had protected the petitioner-defendant by directing him to pay a sum of Rs.5 lacs. Further even the Division Bench of this Court has while protecting the interest of the petitioner-defendant has directed the petitioner to deposit the entire decretal amount.

5. Without expressing anything on the contentions raised before me and considering the application being Misc. Civil Application No. 132/2001, this court only requires to examine that whether the order under challenge is required any interference while exercising my revisional jurisdiction. Prima-facie, on considering the submissions made before me, this Court is of the view that even when the judgement and decree was challenged by the petitioner - defendant by preferring appeal, the Division Bench has also passed an order directing the petitioner - appellant- defendant to deposit decretal amount by granting time. Accordingly, this court is of the view that the defendant is prolonging the decree, which was passed by the trial court by initiating several proceedings before this Court as well as before the trial Court and as per the order passed by this court, the petitioner was directed to furnish bank security to the tune of Rs.2,50,000/-, wherein, the petitioner was directed to deposit Rs. 5 lacs by granting time upto 25.2.2002. This court is of the view that the petitioner has got money by initiating various proceedings in respect of the decree passed but the petitioner is avoiding repayment of the decretal dues. Even till today, he has not paid toward his dues to the respondents. This court is of the view that this is not a matter, where this court is required to entertain the revision application while exercising my revisional jurisdiction and accordingly, the revision application is liable to be dismissed. As the petitioner has furnished

bank security to the tune of Rs.2,50,000/-, it will be possible for petitioner to release the said security from the Bank and accordingly, said amount is ordered to be deposited within one week from today and remaining sum of Rs.2,50,000/- is directed to deposit with the trial Court by way of installments. The first installment is of Rs.1,25,000/-, which the petitioner is directed to deposit with the trial court on or before 23rd April, 2002 and balance amount of Rs.1,25,000/- by granting time on or before 10th May, 2002. The learned trial Judge is accordingly, directed to decide the Misc. Civil Application No. 132/2001 in accordance with law after the above amount is deposited by the petitioner. Rule is discharged. Petitioner to pay costs to the respondent.

(D.K.Trivedi, J.)

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